



# International Cooperation in Dealing with Terrorism: A Review of Law and Recent Practice

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# ARTICLE

## INTERNATIONAL COOPERATION IN DEALING WITH TERRORISM: A REVIEW OF LAW AND RECENT PRACTICE

Philip B. Heymann\*

### INTRODUCTION

Public statements condemning terrorist acts are the common currency of international relations among major industrialized democracies. Only in exceptional cases, however, do these expressions of outrage translate into actual cooperation that leads to the punishment of terrorists. Divergences in foreign policy produced by geopolitical, economic, and historical considerations often frustrate common action.

This article examines four examples of multinational efforts to bring terrorists to trial and traces the elements leading to success or failure in each. They are: (1) the *Achille Lauro* hijacking, (2) the arrest of Fawaz Younis, (3) the hijacking of TWA flight 847, and (4) the trial of Georges Ibrahim Abdallah. Although these cases have important differences, certain themes are common. First, and most important, the doctrine of state sovereignty continues to be a major barrier to the detection and prosecution of terrorists. Application of public international law compartmentalizes sovereign power into discrete territories, thus allowing perpetrators of political violence to move from jurisdiction to jurisdiction, leaving law enforcement officers far behind as they seek to negotiate away the effects of borders. Second, each state's commitment to fighting terrorism rests on a unique, often fragile political compromise. The introduction of external interests in the form of another

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I am indebted to Mr. Richard Martin, U.S. Department of Justice representative in Rome, for much of the material in the section on International Cooperation in Gathering Intelligence and Preventing Political Violence.

state's request for assistance could upset a delicate political balance. Finally, the distinct internal political groups that produce a domestic compromise do not merge into a monolithic bloc at the first hint of foreign involvement. Rather, institutional constituencies such as law enforcement officials may find that their interests resemble those of their foreign counterparts more than those of other groups within their own country. This dynamic provides a powerful analytical tool for explaining the success or failure of international cooperative efforts.

## I. THE NEED FOR INTERNATIONAL COOPERATION: THE HIJACKING OF THE ACHILLE LAURO

On October 7, 1985, a group of armed men seized control of the Italian cruise liner, the *Achille Lauro*,<sup>1</sup> as it left Alexandria, Egypt, and headed for Port Said.<sup>2</sup> Demanding Israel's release of fifty Palestinian prisoners, the hijackers threatened to execute hostages, starting with the American passengers.<sup>3</sup> They claimed affiliation with the Palestine Liberation Front (PLF), but initially it was difficult to know which of the three conflicting factions of the PLF they represented. Two of the three factions were hostile to Yasser Arafat, chairman of the Palestine Liberation Organization (PLO). The third faction, under the leadership of Abu Abbas, was loyal and subordinate to Arafat and the PLO.<sup>4</sup>

The United States promptly dispatched its special rescue team of highly trained military personnel and took what steps it could to keep the ship in international waters.<sup>5</sup> There a rescue effort would not violate the sovereignty of any country, including Italy, since Italy had lost control of the ship. Keeping the ship in international waters would also prevent the terrorists from dispersing the hostages. The National Security Council team managing the crisis for the United States preferred launching a military rescue to attempting negotiation for a vari-

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1. See generally Jenkins, *The Achille Lauro Hijacking* (1989) [hereinafter *Achille Lauro Hijacking*] (discussing the effect of the hijacking on Italian-American relations and international crisis management) (available from the Case Program, John F. Kennedy School of Government, Harvard University, Kennedy School Case Nos. C16-88-863.0 and C16-88-864.0).

2. Tagliabue, *Ship Carrying 400 Is Seized; Hijackers Demand Release of 50 Palestinians*, N.Y. Times, Oct. 8, 1985, at A1.

3. *Achille Lauro Hijacking*, *supra* note 1, at 1(A).

4. See generally McGinley, *The Achille Lauro Affair—Implications for International Law*, 52 TENN. L. REV. 691, 699 (1985) (describing the split of the PLO into pro-Arafat and anti-Arafat sections).

5. *Achille Lauro Hijacking*, *supra* note 1, at 2-3(A).

ety of reasons based in terrorism policy, national morale, and institutional strengths.<sup>6</sup>

Italy also alerted its military rescue forces, but preferred to seek a diplomatic solution.<sup>7</sup> The United States had made counter-terrorism a matter of doctrine and dogma. Italy not only had a more pragmatic approach, being willing to deal with terrorists if that might save lives on this occasion, but, as a Mediterranean power, it also claimed very special relations with the Arab states.

The decision whether to undertake a military rescue effort depended upon developing the intelligence needed to determine whether the PLF-connected hijackers were associated with Arafat's PLO or opposed to it and the PLO's steps toward negotiations with Israel. Arafat's faction would not have intentionally hijacked the ship of a friendly power such as Italy from the port of a friendly power such as Egypt at a time when it also wanted the United States to support its peace efforts.<sup>8</sup> State Department officials speculated that the hijackers were planning a raid in Israel but someone on the ship had detected their presence, causing them to panic and hijack the *Achille Lauro*.<sup>9</sup>

U.S. officials had to determine which PLF faction had seized the ship before they could decide on a solution. They theorized that if the hijackers were associated with Arafat, the western powers would not need to launch a dangerous military assault for two reasons. First, such an attack would be unnecessary to free the ship and its passengers, since Arafat would probably find a way to release the ship. Second, a military attack on the hijackers would not be necessary to discourage future hijackings, because even in this case there was no initial intention to hijack the ship.

If, on the other hand, an anti-Arafat faction of the PLF had seized the ship, the hijackers' intent may have been to discredit Arafat in his diplomacy efforts. Under this scenario, negotiations would be less likely to resolve the hijacking. Furthermore, it would be more important to take actions that would discourage future hijackings. But if these anti-

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6. See Gwertzman, *State Department Angry At Speedy Accord With Gunmen*, N.Y. Times, Oct. 10, 1985, at A1 (reporting the United States government's anger with the Italians' and the Egyptians' handling of the incident).

7. See *Achille Lauro Hijacking*, *supra* note 1, at 3-4(A) (reporting the steps the Italian government took to ready its military forces for a possible confrontation, and quoting Prime Minister Craxi's statement that military force would only be used in the event of an "extreme emergency").

8. See *Achille Lauro Hijacking*, *supra* note 1, at 7(A) (noting the risk to the PLO's good relations with both governments).

9. *Id.*

Arafat interests were in control, a raid on the ship could be very dangerous.

On October 8, Syria refused to allow the *Achille Lauro* to dock and the anti-Arafat PLF faction sponsored by Syria denounced the hijacking.<sup>10</sup> That same day there were indications that the hijackers had killed an American hostage.<sup>11</sup>

Although the United States, with the help of Israeli intelligence, was able to follow the ship after it left Syria on October 8th,<sup>12</sup> it was not able to mount a rescue operation before the ship had sailed into Egyptian waters and into the protection of Egyptian sovereignty.<sup>13</sup>

In Egypt, a PLO delegation, including Abu Abbas, negotiated with the hijackers.<sup>14</sup> Italy encouraged these meetings, but the United States did not. On Wednesday afternoon, the hijackers left the ship, and officials discovered what the United States had suspected—that the previous day the hijackers had brutally murdered a passenger, the wheelchair-bound American, Leon Klinghoffer.<sup>15</sup> That discovery released Italy from its obligation to provide safe passage to the hijackers because Italy had conditioned its agreement on the absence of serious violence.<sup>16</sup>

Outraged both by Italy's negotiation with terrorists and by the release, whether knowing or unknowing, of the murderers of an American citizen, the United States issued strong public statements.<sup>17</sup> Italy responded by agreeing to seek the extradition of the four hijackers from Egypt. President Mubarek of Egypt falsely stated that the hijackers had already left Egypt and that consequently, he could be of no assistance.<sup>18</sup> Meanwhile, Israeli intelligence sources provided information that a man calling himself Abu Khaled, who was associated with the hijackers, was really Abu Abbas. At this time, a representative of Abu Abbas' faction acknowledged its responsibility for the hijacking.

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10. *Id.* at 5(A).

11. *See id.* at Exhibit 1 (reporting the communications between the hijackers and port authorities in Syria during which the hijackers announced they would kill a second hostage).

12. *Achille Lauro Hijacking*, *supra* note 1, at 10(A).

13. *Id.* at 11(A).

14. *Id.*

15. *Id.* at 13(A).

16. *See id.* at 15(A) (relating a statement made by Prime Minister Craxi to the Italian press implying that Italy was no longer bound to commitments previously made to secure the release of the hijackers).

17. *Id.* at 15-16(A).

18. *See id.* at 18(A) (describing reports obtained from Israeli intelligence sources that disclosed that the hijackers were still in Egypt, and the confirmation of those reports by the National Security Agency).

When the United States learned from reliable intelligence sources that the hijackers were leaving Egypt, the National Security Council's crisis management team, led by Vice-Admiral John Poindexter, decided to intercept the Egyptian Air plane that would carry Abu Abbas and the hijackers out of the country.<sup>19</sup> Intelligence sources were able to transmit the plane's identification number and flight plan.<sup>20</sup> With President Reagan's consent, American Navy pilots brought down the plane at the NATO airbase at Sigonella, Sicily.<sup>21</sup> Informed at the last minute, Prime Minister Craxi of Italy allowed the plane to land in Sicily.<sup>22</sup>

The United States did *not* notify Craxi that it would also land two transport planes carrying Delta Force troops.<sup>23</sup> These troops had orders to seize the passengers of the Egyptian plane, transfer them to an American plane, and fly them to the United States for trial.<sup>24</sup> Italian troops, however, prevented these aspects of the United States' operation.<sup>25</sup> The Egyptian plane and its occupants remained in Sicily.

Not even the persuasiveness of President Reagan could bring the Italian government to turn over the hijackers to the United States. Prime Minister Craxi explained that relinquishing the terrorists would be contrary to Italian law.<sup>26</sup> His reasoning was that on Italian soil, the Italian judiciary, not the executive, had responsibility. Craxi did promise to arrest the hijackers.<sup>27</sup> The two countries, however, never clearly agreed on the fate of Abu Abbas.

The Italians removed the four hijackers from the Egyptian plane. The United States and Italy congratulated themselves in their local media on the success of every aspect of the operation, from the release of the hostages to the capture of their hijackers.<sup>28</sup> Leaders of both na-

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19. *Id.*

20. *Id.* at 18-21(A) (discussing the National Security Council's interception plan).

21. *Id.* at 20-21(A).

22. See Note, *An Analysis of the Achille Lauro Affair: Towards an Effective and Legal Method of Bringing International Terrorists to Justice*, 9 FORDHAM INT'L L.J. 328, 337 (1986) (assessing the legitimacy of the action); see also Recent Development, *Use of Force: Interception of Aircraft*, 27 HARV. INT'L L.J. 761, 767 (1986) (raising the issue of the United States' infringement on Egypt's state sovereignty).

23. *Achille Lauro Hijacking*, *supra* note 1, at 23(A).

24. *Id.* at 22(A).

25. *Id.* at 23(A).

26. See *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) (holding that the nation whose flag is on the ship has jurisdiction over the acts that occur on that ship); Convention on the High Seas, Apr. 29, 1958, art. 6, 13 U.S.T. 2313, T.I.A.S. No. 5200, 450 U.N.T.S. 82, 86. (indicating that Italy had jurisdiction over the terrorists because the hijacking occurred on an Italian-flagged ship).

27. *Achille Lauro Hijacking*, *supra* note 1, at 2(B).

28. *Id.* at 3(B) (discussing reports of the incident in the *New York Times* and the *New York Daily News*).

tions commented warmly on their mutual cooperation.<sup>29</sup> The Italians, however, would not relinquish custody of Abbas and his associates, who had helped Egypt negotiate the return of the *Achille Lauro*. Moreover, Egypt insisted that Abbas and his associates were still within Egyptian jurisdiction in a hijacked plane.<sup>30</sup> Hence, other countries could not remove them. Since Egyptians still held the *Achille Lauro* and its crew, Italy had to take Egypt's views very seriously. Italy did not allow the plane to leave, however, because it claimed that the testimony of its occupants might be necessary for the investigation of the others involved in the planning and execution of the hijacking.<sup>31</sup>

Although the United States sought extradition of the four hijackers as a guarantee that they would be tried somewhere, it acknowledged the primary jurisdiction of the Italian judiciary to prosecute crimes committed aboard an Italian ship.<sup>32</sup> The differences between the United States and Italy thus centered on Abu Abbas. United States Department of Justice officials obtained an arrest warrant for Abbas in Washington and requested the Italian government to perform a provisional arrest.<sup>33</sup> The United States believed that this would allow forty-five days to successfully complete the extradition process.

Italy, however, circumvented its normal procedure for handling a request for a provisional arrest in an extradition proceeding. The Italian government announced that the United States' request, though formally correct, did not, in the Justice Minister's opinion, "satisfy the factual and substantive requirements laid down by Italian law."<sup>34</sup> The Italian government allowed Abbas to leave Italy and fly to Yugoslavia.<sup>35</sup>

Reagan Administration officials responded with sharp public criticism of the Italian government, stating that the President felt "very angry"<sup>36</sup> and "personally betrayed"<sup>37</sup> by Prime Minister Craxi. At the same time, the Italian press denounced the United States.<sup>38</sup> This split encouraged a division between the Socialists and the Christian Demo-

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29. *Id.*

30. *Id.* at 5(B).

31. See Weinraub, *Extradition Asked Palestinians in Belgrade—White House Faults Rome's Decision*, N.Y. Times, Oct. 13, 1985, at A1 (describing the incident's effect on American-Italian relations).

32. *Achille Lauro Hijacking*, *supra* note 1, at 7(B).

33. *Id.* at 10(B).

34. *Id.* at 11(B).

35. *Id.* at 13(B).

36. *Id.* at 14(B).

37. *Id.*

38. *Id.* at 15(B).



crats within Italy's coalition government.<sup>39</sup> The Socialists, who had many other disagreements with the coalition leader, took advantage of the situation to walk out of Parliament, thereby causing the dissolution of the Craxi government.<sup>40</sup>

The United States did not welcome the support that Craxi promptly received from the Italian Communist Party.<sup>41</sup> The American government quickly attempted to heal the rift in Italian-American relations. President Reagan wrote a warm letter to Prime Minister Craxi.<sup>42</sup> Shortly thereafter, a new Craxi government was formed.<sup>43</sup>

Meanwhile, the Italian judiciary and prosecutors proceeded vigorously. Abu Abbas received a life sentence *in absentia*.<sup>44</sup> Leon Klinghoffer's killer received a thirty-year sentence, while the Italian court sentenced his second-in-command to twenty-four years in jail.<sup>45</sup> A third hijacker who had collaborated with Italian authorities, received a fifteen year sentence.<sup>46</sup> Several others, whom the Italian court found to have assisted the hijackers, received sentences of six or seven years.<sup>47</sup>

#### A. AREAS FOR INTERNATIONAL COOPERATION

One often perceives terrorism as a violent activity carried out by private groups challenging a national government or some of its policies.<sup>48</sup> This description, however, ignores a significant advantage that such groups have in their contests against sovereign governments—their ability to use the territory of other states and thereby to benefit from powerful notions of state sovereignty. In this way, terrorists can often prevent the direct intervention of any other government, including the state which has been the victim of the terrorist attack.<sup>49</sup> For example, by bringing the *Achille Lauro* within Egyptian territorial waters, the

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39. *Id.* at 16(B).

40. See Buxton, *Italian Coalition Falls As Craxi Criticises U.S.*, *Fin. Times*, Oct. 18, 1985, sec. 1, at 1 (reporting the resignation of the Craxi government).

41. *Achille Lauro Hijacking*, *supra* note 1, at 17(B).

42. See Buxton, *Craxi Seeks To Repair Damaged U.S. Relations*, *Fin. Times*, Oct. 24, 1985, sec. 1, at 2 (noting Reagan's and Craxi's attempts to mend relations between their two nations).

43. See *Craxi's Coalition Parties Pick up the Reins Again*, *Fin. Times*, Nov. 1, 1985, sec. 1, at 3 (discussing the renewed coalition government under Craxi).

44. *Achille Lauro Hijacking*, *supra* note 1, at 18(B).

45. *Id.*

46. *Id.*

47. *Id.*

48. See Levitt, *Is Terrorism Worth Defining?*, 13 OHIO N.U.L. REV. 97, 100 (1986) (attempting to define terrorism).

49. See Nadelmann, *The Role of the United States in the International Enforcement of Criminal Law*, 31 HARV. INT'L L.J. 37, 40 (1990) (surveying the wide array of agencies involved in the battle against terrorism in the United States).

hijackers forced the United States to abandon its plans for a military assault because such an attack would have violated Egypt's state sovereignty.<sup>50</sup> The problem is very widespread. It arises whenever a group planning or using political violence in or against one state seeks to take advantage of the lesser concern of other states about the group's activities, by seeking sanctuary or help from them. In this very common situation only cooperation among states can prevent the violent act, discourage future terrorism, and punish the perpetrators.

Relations between a terrorist group and states to which the group turns for assistance or sanctuary range across a broad spectrum. At one end, a sanctuary state may not know that a private group is preparing violent acts or seeking sanctuary for its members within that state's borders. Egypt, for example, may not have known that the hijackers were in Alexandria. The sanctuary state may or may not make a substantial effort to develop this intelligence.

Somewhere further along the spectrum of involvement, a sanctuary state may know of the presence of a violent group but neither take action against it, nor reveal this information to the victim state. Had Egypt known of a planned attack on Israel, it still might not have acted. Refusing to act is far more serious if the sanctuary state knows that the group is planning a future act of violence than if the state simply knows that the perpetrators of a prior event are hiding within its borders. President Mubarek's lie concerning the location of the hijackers may have been unwise, but it did not assist the hijackers in committing a violent act.

At the far end of the spectrum of involvement, a sanctuary state might provide support in the form of money, explosives, safe places for meetings, or false documents. No one knows which state supported Abu Abbas' faction in the hijacking of the *Achille Lauro*. In other instances, extensive state support has been readily identifiable.<sup>51</sup>

To offset the ability of terrorist groups to use a state for sanctuary, sanctuary states and other, nonsanctuary states need to cooperate in three specific areas. These areas are: (1) sharing intelligence to prevent terrorist attacks; (2) assisting in the arrest and trial of the perpetrators;

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50. See *supra* notes 19-25, and accompanying text (discussing the United States response to the hijacking).

51. See Levitt, *Democracy Against Terror: The Western Response to State-Sponsored Terrorism* 85-92 (1988) [hereinafter *Democracy Against Terror*] (relating that Syria provided a full range of support to Nizar Hindawi, whom the British arrested for attempting to place a bomb in the luggage of his Irish girlfriend as she boarded a jumbo jet bound for Tel Aviv on April 17, 1986). Hindawi's trial fully documented Syria's assistance to him. *Id.*

and (3) cooperating to enforce sanctions against any state government which supports political violence.

The need for intelligence information and preventive efforts was obvious in the *Achille Lauro* case. The governments of Egypt, Italy, or Tunisia, the home of the PLO, could have prevented the hijacking and killing had they known something about the plans or general strategies of either the PLF or of the particular hijackers. Sharing intelligence could have played a crucial role in preventing the hijacking of the *Achille Lauro*.

The United States and Israel, in fact, shared both strategic and tactical intelligence which helped in locating and arresting the hijackers.<sup>52</sup> The Israelis knew enough about Abu Abbas to know the pseudonyms under which he operated. They disseminated that information to the United States when it was still crucial to determining which faction of the PLF was involved. At an operational level the sharing of information between Israel and the United States enabled the United States to follow the *Achille Lauro* as it left Syria and to ascertain that the hijackers were still at an airbase thirty miles outside Cairo, despite President Mubarek's public statements.<sup>53</sup>

Cooperation is equally essential in arresting and trying the perpetrators of political violence. For example, without Egypt's cooperation, the United States and Italy were unable to prevent the hijackers from leaving Egypt. With Italy's cooperation, however, the United States was able to bring their plane down in Sicily. American witnesses, whom the United States flew to Italy, provided evidence for use in an Italian trial. Conversely, a trial in the United States would have required that Italy arrest and extradite Abu Abbas and furnish evidence for the trial.

Finally, cooperation with a number of states formally or informally allied with the victim state is often required if the victim state wants to punish a sanctuary state for providing assistance to a terrorist group. This is particularly true if the victim state contemplates economic or diplomatic sanctions or the denial of landing rights. These forms of punishment are only effective if they are widespread. The United States, for example, supported the United Kingdom in imposing such sanctions on Syria when its agent Hindawi tried to destroy an El Al jumbo jet in 1986.<sup>54</sup> The United States needed the cooperation of other nations when it undertook military retaliation against Libya for the

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52. See *supra* note 12, and accompanying text (discussing the information Israel shared with the United States).

53. See *Achille Lauro Hijacking*, *supra* note 1, at 18(A) (describing the National Security Council's interception plan).

54. *Democracy Against Terror*, *supra* note 51, at 85-92.

bombing of a Berlin discotheque.<sup>55</sup> Great Britain permitted American planes to take off from Great Britain, but France and Italy did not allow them to fly over their territories.<sup>56</sup>

#### B. ELICITING COOPERATION AGAINST A TERRORIST GROUP

How can a state victimized by political violence elicit cooperation from a state used as a sanctuary by, or providing assistance to, the violent group? It can use its own political resources or turn to its allies for help. What is required depends upon the attitude of the sanctuary state toward the violent group.

Regardless of the support or nonsupport that the sanctuary state provides to a violent political group, the sanctuary state's approach toward the group's activities falls into one of four broad categories. First, like Italy, it may be strongly opposed to political violence against the victim state. In that event, its failure to prevent the use of its territory by the group would result from either lack of information or stronger, competing foreign policy or domestic concerns. Second, the sanctuary state may want to remain neutral in the contest between the terrorists and the victim state, like Egypt in the *Achille Lauro* incident. Third, the sanctuary state may be an active supporter of the terrorists. Fourth, as in the case of Lebanon, the sanctuary state may be unable to control the activity within its own territory because of deep and powerful divisions within the population.

Obviously, the objective of a victimized state is to bring the sanctuary state to act against the terrorists. Some alternatives are primarily moral or reputational. For example, the victim state may appeal to a tradition of friendship and imply that indifference to its plight may threaten a rich network of common relations and interests. If the victim state expects the sanctuary state's population to share its disapproval of the violence, it could appeal directly to the voting public of the sanctuary state. The victim state could also appeal to international law or treaty obligations.

If the sanctuary state tolerates the activities in its territory because it is unwilling to antagonize the terrorist group stronger measures are available to the victim state. For example, the United States and the six other major western nations that constitute the Summit Seven<sup>57</sup> (the Seven) effectively threatened South Africa with the cancellation of

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55. *Id.* at 71.

56. *Id.* at 75-77.

57. The Summit Seven nations are: the United States, the United Kingdom, Germany, Italy, France, Japan, and Canada.

air traffic because of a failure to punish terrorists.<sup>58</sup> Similarly, states may discourage travel to a particular nation, reduce the size of an embassy, or vote against particular loans. If Greece refused to extradite the terrorist Rashid, who detonated a bomb on an American jet flying over Hawaii,<sup>59</sup> the United States could oppose Greece's bid to host the 100th anniversary of the modern Olympics in the name of safety. Finally, if the victim state was dealing with a sanctuary state which actively supported terrorism, the victim state could break all economic and diplomatic relations or, more dramatically respond militarily, invoking the doctrine of self defense, as the United States did in bombing Libya.<sup>60</sup>

The victim state's capacity and willingness to bring any of these pressures to bear on the sanctuary state depends upon several factors. If the sanctuary state is politically or economically important to the victim state and its allies, they may be less willing to take severe measures. The sanctuary state's strategic situation may also influence the victim state's behavior towards it. For example, the United States bombed Libya; it took lesser measures against Syria; it bargained with Iran. The sanctuary state's place in the contest between superpowers has, until recently, also influenced the victim state's behavior towards it. To illustrate, an aerial attack on Damascus would have involved a serious risk of conflict with the Soviet Union. The United States did not face that risk when it attacked Tripoli.

History also plays a role, for it affects the attitude of a victim state and its allies toward a sanctuary state. Italy has historic as well as economic ties with Libya; France has similar links to Syria.<sup>61</sup> As a result, Italy and France will be less willing to adopt severe measures against Libya and Syria when they offer sanctuary to terrorists.

The victim state's capacity to use some types of sanctions, particularly economic and diplomatic measures, to persuade a sanctuary state to take action against a terrorist group generally depends upon the victim state's ability to rally influential allies. Without a broad base of support for the victim state from allied nations, a sanctuary state can

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58. *Democracy Against Terror*, *supra* note 51, at 55-56.

59. Jenkins, *Seeking the Extradition of Mohammed Rashid*, at 13 (1990) [hereinafter *Extradition of Rashid*] (discussing the negotiations between Greece and the United States for the extradition of Rashid to the United States) (available from the Case Program, John F. Kennedy School of Government, Harvard University, Kennedy School Case No. C16-90-982.0).

60. *Democracy Against Terror*, *supra* note 51, at 71.

61. See D. PERETZ, *THE MIDDLE EAST TODAY* 396-407 (4th ed. 1983) (describing the political situation during the French mandate for Syria).

and will simply compensate elsewhere for measures taken against it by the victim state.

Because the Summit Seven share a common concern about terrorism, they may cooperate to effectively pressure any state providing sanctuary to terrorists. Acting together, the Seven can bring very powerful economic threats or diplomatic measures against any sanctuary state that supports political violence against one of the seven. Regrettably, numerous factors limit the capacity of the Seven to act in concert against terrorism.

Each of the Seven has different foreign policy commitments and ties. France and Italy have historic, economic, and demographic ties to the Middle East which the United States, the United Kingdom, Germany, Canada, and Japan do not share. In addition, each of the Seven must confront different domestic political pressures when dealing with terrorism. With a large and passionate Irish-American population, the United States has often been slow to extradite IRA terrorists.<sup>62</sup> Germany must deal with terrorism in light of its history of Nazi oppression. Each of the Seven are subject to different dangers of retaliation from a politically violent group or its state sponsors depending on physical proximity, ease of travel, and the nationality of any hostage being held. Such differences would not affect a state's capacity to exert pressure on a sanctuary state if, as the United States has often urged, the victim state and its allies all viewed opposition to terrorism as a matter of fundamental morality, and agreed that one should never make concessions to terrorists. Such agreement, however, does not even exist among the United States' closest allies.

Certainly Italy rejected this notion in the *Achille Lauro* case. Italy believed it proper to handle terrorism in any way designed to save the lives and property of endangered citizens. For Italy, the attack merely reflected the perpetually amoral world of the Middle East, where terrorism is a familiar tool of foreign policy. Italy hopes to retain an important role in this world. Even the United States has not been steadfast in its claim that countries should remove terrorism from the world of prudential and foreign policy concerns and instead should treat it as a strict matter of right and wrong under the applicable rule of law. President Reagan dealt with Iran, offering TOW missiles in exchange for the release of hostages.

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62. See Comment, *The Omnibus Diplomatic Security and Antiterrorism Act of 1986: Prescribing and Enforcing United States Law Against Terrorist Violence Overseas*, 37 UCLA L. REV. 985, 1008 (1990) (describing two cases in which IRA members carried out terrorist attacks in Great Britain but U.S. courts, applying the political offense exception, refused to extradite the attackers).

The United States cannot use economic and diplomatic sanctions to overcome the different approaches among its closest allies to threats of political violence. These approaches are deeply rooted in foreign policy, politics, economics, exposure to retaliation, and history. Each of the Seven would be extremely reluctant to invoke harsher forms of influence against the others to obtain cooperation against a sanctuary state. Too many beneficial relationships bind these countries to each other to risk rupture over the issue of cooperation in fighting particular terrorist groups. The most one of the Seven can do is encourage the other six states to cooperate in dealing with a common threat of political violence in order to increase the capacity of each to put pressure on states which would otherwise support political violence or remain neutral.

### C. INTERNATIONAL COOPERATION IN GATHERING INTELLIGENCE AND PREVENTING POLITICAL VIOLENCE

As we saw in the *Achille Lauro* case, intelligence sharing about terrorist groups is one of the crucial forms of assistance from and among allies. States such as Israel, the United States, Italy, Germany, Spain, and the United Kingdom do in fact share information about the activities of terrorist groups, changes in their organizational structure, the movement of their members, and their operational plans. Such exchanges of information have apparently enabled Germany to arrest Hamadei<sup>63</sup> and Greece to arrest Rashid.<sup>64</sup> They have also led to a number of seizures of weapons and equipment. The benefits of friendly governments sharing information about a common threat are obvious, but even this core type of cooperation cannot be taken for granted.

Almost every western state separates foreign and domestic intelligence gathering from law enforcement. This internal division of labor results in a host of difficulties in bringing about cooperation among the various agencies of even a single country. It is hardly surprising that these problems are compounded when cooperation with another state is attempted, either at an informal working level or at higher levels through more formal arrangements.

States may choose to defend themselves against terrorism by *not* cooperating with a friendly state that is the primary target of terrorists.

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63. See generally Kennedy, *The Extradition of Mohammed Hamadei*, (1988) [hereinafter *The Extradition of Mohammed Hamadei*] (explaining the events leading up to Germany's denial of Hamadei's extradition) (available from the Case Program, John F. Kennedy School of Government, Harvard University, Kennedy School Case No. C15-88-835.0).

64. See generally *Extradition of Rashid*, *supra* note 59 (relating the steps that the United States took with regard to Rashid's extradition).

Alternatively, its foreign policy concerns may dictate noncooperation. In either event, withholding crucial intelligence is unlikely to harm a friendly relationship because the victim state cannot denounce a failure to deliver information which it is not certain that the noncooperating state possesses.

States concerned that strong action by them against particular terrorist groups might lead to reprisals or adverse foreign policy consequences are aware that inaction requires hiding their knowledge of terrorist activities, in other words, not sharing intelligence information. If a state reveals that it is dealing with terrorists or providing them with sanctuary, large segments of its own public and allied foreign governments are likely to react with outrage. Having extensive knowledge of ongoing terrorist activities within the state's borders is likely to be seen as evidence that a state is secretly providing such aid or asylum to terrorists. It may seem wiser to withhold the information for this reason as well as because terrorists will view sharing intelligence about them as a hostile act.

Moreover, unlike law enforcement agents who often identify themselves as members of a common profession and cooperate informally with each other, intelligence agents are trained not to share information, to classify what they learn, and to protect their sources at all costs. Although frequent and personal relations can partially overcome inhibitions on the transfer of information between intelligence services, intelligence organizations must frequently stamp intelligence information with requirements of "no foreign dissemination."

This reluctance to share intelligence information with other states would pose less of a problem if intelligence information flowed freely back and forth between intelligence and law enforcement agencies. Police agencies have a greater tradition of sharing information across borders, but a "no foreign dissemination" stamp will prevent those agencies from communicating the information to law enforcement colleagues in other friendly states. Intelligence, defense, and foreign ministry officials, moreover, perceive a special risk in letting even their own law enforcement colleagues have access to information. By law in many European countries, and by practice in the United States, this disclosure would generate a prompt demand for investigation and prosecution of any criminal activity—actions that terrorist groups would view as hostile. Thus, even when national governments invite their judiciary and police to assist foreign governments, these agencies often do not have access to vital information.

Even if the necessary information were made available to law enforcement officials for sharing with foreign colleagues, administrative



problems would harmfully affect the formal systems of daily exchange of information among national law enforcement organizations. For example, the International Criminal Police Organization, known as Interpol, has until recently taken a very expansive view of what constitutes a political offense.<sup>65</sup> While personal relations can replace such formal systems and facilitate the exchange of information, regular access to foreign counterpart agencies and facilitating arrangements, such as periodic conferences, are necessary for personal relations to be effective. Although the United States and Germany are leaders in placing law enforcement personnel in other countries, the number of even these countries' law enforcement agents abroad is very small and their responsibilities cover other areas in addition to terrorism. Intelligence agents with a foreign policy or defense interest are much more likely to have the overseas presence that creates personal exchanges. Foreign ministry representatives and intelligence officers, not law enforcement officials, generally chair conferences that are designed to explore matters of shared interest in terrorist activities. As a result, law enforcement personnel are left without official occasions for exchanging information.

If terrorism at home is viewed as a domestic issue of criminal law and terrorism abroad is perceived as another state's problem, often best avoided, there is no great inclination to develop cooperative processes for sharing information. Nations have begun to change their attitudes toward terrorism abroad as a result of the United States' efforts to combat international terrorism in the 1980's, particularly the United States' bombing of Libya. Yet, the problem remains. At its root lies a simple fact—maintaining a state's freedom to deal as it wishes with terrorists often requires hiding crucial information from that state's own population, friendly governments, and the law enforcement system.

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65. M. ANDERSON, *POLICING THE WORLD: INTERPOL AND THE POLITICS OF INTERNATIONAL POLICE COOPERATION* (1989); see L. GREILSAMER, *INTERPOL, LE SIÈGE DU SOUPÇON* (1986) (providing an overview of the organization's history). Interpol is headquartered in France and is composed chiefly of police officials on assignment from national governments. Interpol acts primarily as a repository and clearinghouse for information on crime and criminals.

## II. UNILATERAL ACTION AND INTERNATIONAL COOPERATION IN THE DETENTION AND TRIAL OF TERRORISTS

### A. THE UNILATERAL ALTERNATIVE: THE ARREST OF FAWAZ YOUNIS

A state that is the victim of political violence may not need its allies' cooperation to apprehend and try the perpetrators. That state may find the perpetrators within its own borders, and if the event took place domestically, all of the evidence may be available within the jurisdiction. If the violent act was not local, the victim state may be able to act against the perpetrators abroad if it knows where they are. Sometimes secret and illegal intelligence operations are used. Israel's Mossad supposedly executed most of the members of the terrorist group that murdered Israeli athletes in Munich. British military agents killed three members of the Irish Revolutionary Army (IRA) in a Gibraltar incident that British authorities have never adequately explained.

Sometimes a state can unilaterally seize the perpetrators of political violence abroad and bring them back for trial in the victim country while preserving the rule of law. The case of Fawaz Younis,<sup>66</sup> a twenty-eight year old Lebanese man whom FBI agents lured onto a yacht in international waters in the fall of 1987, is an example. The FBI agents arrested Younis and transported him to the United States, where he was tried and convicted for involvement in the 1985 hijacking and destruction of a Jordanian airliner at Beirut International Airport. Using Younis' friend as its agent, the FBI fabricated a drug deal on the yacht. Younis voluntarily went from Cypress to the yacht.

Abducting Younis from the territory of another state would have violated international law, unless it could be justified as self-help against a sanctuary state that was knowingly assisting Younis in further attacks on the United States. Because the FBI abducted Younis on the high seas, state sovereignty was not an issue. Even if the Universal Declaration on Human Rights<sup>67</sup> and the International Covenant on Civil and

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66. See generally Jenkins, *Bringing Terror to Justice* (1990) [hereinafter *Bringing Terror to Justice*] (relating the events leading to the abduction and trial of Fawaz Younis) (available from the Case Program, John F. Kennedy School of Government, Harvard University, Kennedy School Case No. C96-90-960.0); see also Lowenfeld, *Special Issue: The United States Constitution in its Third Century: Foreign Affairs: Constitutional Law—International Law: U.S. Law Enforcement Abroad: The Constitution and International Law*, 83 AM. J. INT'L L. 880, 880-81 (1989) (discussing Fawaz Younis' arrest and detention in light of its constitutional implications).

67. Universal Declaration of Human Rights, signed Dec. 10, 1948, G.A. Res. 217A (III) at 71, U.N. Doc. A/810 (1948).

Political Rights<sup>68</sup> were binding treaties that the United States had ratified, the seizure would not have been in violation of either treaty.<sup>69</sup> Protection against arrest abroad is not a traditional human right. The only applicable provisions of the Declaration and the Covenant—protection against “arbitrary arrest [and] detention”<sup>70</sup>—seem to be directed at repressive domestic practices rather than at arrests under valid arrest warrants where law enforcement officials promptly present the suspect before a court.

Under international law, the United States may properly apply its laws extra-territorially in several circumstances: against its own nationals;<sup>71</sup> when the protective principle<sup>72</sup> is involved because the criminal acts threaten the security of the United States; and when the defendant commits a crime that is universally recognized as heinous.<sup>73</sup> In most cases of political violence against American vital interests, either the protective principle<sup>74</sup> or the notion of universal offense applies.<sup>75</sup> For instance, Younis’ hijacking and destruction of a Jordanian airplane on an international route implicated the universal offense principle. Indeed, there are several international agreements—the Montreal,<sup>76</sup> Hague,<sup>77</sup> Tokyo,<sup>78</sup> and Hostage<sup>79</sup> Conventions—that provide for gen-

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68. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6546 (1966).

69. His treatment did, of course, raise serious moral issues. During the five days before his arraignment in Washington, D.C., he was locked in a small room for an extended period of time, drugged and then shipped in a small fighter plane across the Atlantic Ocean.

70. International Covenant on Civil and Political Rights, *supra* note 68, at 54.

71. *Democracy Against Terror*, *supra* note 51, at 71.

72. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(3) (1987). The protective principle is the idea that a state may prescribe laws regarding “certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.” *Id.*

73. *Id.* § 404.

74. The protective principle applies to offenses that threaten the security of the state and the integrity of its governing bodies, but does not allow states to create laws prohibiting political expression. *Id.* § 402, comment f.

75. *Id.* § 404. A state may proscribe and punish “offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism. . . .” *Id.* That the crimes listed in this section are subject to universal jurisdiction is the result of the evolution of customary international law and the interests of all states in suppressing these crimes. *Id.* at comment a.

76. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, T.I.A.S. No. 7570, 974 U.N.T.S. 177 [hereinafter Montreal Convention] (entering into force in the United States on Jan. 26, 1973).

77. Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192, 860 U.N.T.S. 105 [hereinafter Hague Convention] (entering into force in the United States on Oct. 14, 1971).

eral jurisdiction over such offenses in every signatory state, thereby strengthening the claim that the universal principle applies.

Thus empowered under international law, the United States has passed several statutes with extraterritorial reach.<sup>80</sup> Typical and pertinent to the Younis case is the Aircraft Sabotage Act of 1984. This Act applies to anyone who "destroys a civil aircraft registered in a country other than the United States" so long as the offender "is later found in the United States."<sup>81</sup> The Hostage Taking Act of 1984 also applies when "the offender is found in the United States."<sup>82</sup> The phrase "found in the United States" includes people who have been brought into the United States. The presence requirement is simply a means to determine which state may bring charges.

There are no constitutional administrative obstacles to seizing suspected terrorists abroad.<sup>83</sup> President Reagan signed a classified directive that authorized the CIA to take such actions.<sup>84</sup> The Department of State has publicly taken the position that nothing in international law prohibits the United States from capturing terrorists in international waters or air space.

Thus, when a suspect is in international waters, there is no legal bar to unilateral action to seize, detain, and bring back promptly for trial someone who has violated the laws of the victim state, even abroad, so long as the sovereignty of an innocent state is not invaded and the victim state has a sufficiently recognized basis for asserting jurisdiction. The situation is, of course, radically different if the operation invades the sovereignty of another nation. In the *Achille Lauro* case, the United States forced an Egyptian airliner to the ground, but Italy re-

78. Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219 [hereinafter Tokyo Convention] (entering into force in the United States on Dec. 14, 1969).

79. International Convention Against the Taking of Hostages, G.A. Res. 34/146, 34 U.N. GAOR Supp. (No. 46) at 245, U.N. Doc. A/C.6/34/L.23 (1979), reprinted in 18 I.L.M. 1456 [hereinafter Hostages Convention].

80. See Aircraft Sabotage Act of 1984, 18 U.S.C. §§ 31, 32 (1988) (stating that acts of airplane violence will either receive a \$100,000 fine or a prison sentence of not more than twenty years); Act for the Prevention and Punishment of the Crime of Hostage-Taking of 1984, 18 U.S.C. § 1203 (1988) [hereinafter Hostage-Taking Act] (providing that anyone who takes hostages will receive a prison term of any number of years or life imprisonment).

81. Aircraft Sabotage Act § 32(b)(2).

82. Hostage-Taking Act § 1203(b)(1)(B).

83. See *Ker v. Illinois*, 119 U.S. 436 (1886) (deciding that the state could try a defendant brought within the court's jurisdiction through forcible abduction); *Frisbie v. Collins*, 342 U.S. 519 (1952) (affirming the trial court's conviction of the defendant even though the state acquired jurisdiction by force).

84. Walcott and Paszter, *Reagan Ruling Let C.I.A. Kidnap Terrorists Overseas Disclosed*, Wall St. J., Feb. 20, 1987, at A1.

refused to disregard Egypt's claim of jurisdiction and forcibly remove Abu Abbas from the plane. The United States could not seize the hijackers because the plane was on Italian soil.

This incident served as a sharp reminder of the limits of unilateral action. The occasions on which it has been tried, such as the Eichmann case,<sup>85</sup> are famous but few. Unilateral action is rarely legal. The costs of ignoring international law can be great. A wiser way to bring to justice a suspect located abroad is to seek the cooperation of the sanctuary state in extraditing him to the victim state or bringing him to trial.

#### B. THE POWER AND LIMITS OF INTERNATIONAL LAW IN COMPELLING COOPERATION: THE HIJACKING OF TWA FLIGHT 847

Alternatives to unilateral action exist. On June 14, 1985, Arab terrorists hijacked TWA flight 847 en route to Rome from Athens and forced the crew to fly to Beirut.<sup>86</sup> In Beirut the hijackers killed an American Navy diver, Robert Stethem, and held thirty-nine passengers, who were mainly Americans, and the crew hostage for seventeen days.<sup>87</sup> Eighteen months later Germany arrested one of the accused hijackers, Mohammed Ali Hamadei, a twenty-two year old Lebanese, as he departed from a plane in Frankfurt, West Germany.<sup>88</sup> Hamadei was carrying a suitcase full of explosives.<sup>89</sup> Someone had provided essential intelligence to the West Germans.

The United States immediately sought Hamadei's extradition under its treaty with Germany.<sup>90</sup> Like many other countries, the United

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85. *Attorney General v. Eichmann*, 36 I.L.R. 277 (Sup. Ct. 1962). See P. PAPADATOS, *THE EICHMANN TRIAL* (1964) (discussing problems and questions arising from the Eichmann trial); Fawcett, *The Eichmann Case*, 38 BRIT. Y.B. INT'L L. 181 (1962) (considering whether Israel exceeded state jurisdiction when it abducted Eichmann while he was abroad); Treves, *Jurisdictional Aspects of the Eichmann Case*, 47 MINN. L. REV. 557 (1963) (analyzing whether Israel's exercise of jurisdiction was proper under existing principles of international law).

86. See generally Kennedy, Stein and Rubin, *The Extradition of Mohammed Hamadei*, 31 HARV. INT'L L.J. 5, 5 (1990) (discussing the TWA 847 incident); *The Extradition of Mohammed Hamadei*, *supra* note 63 (reviewing the United States' efforts to extradite Hamadei from Germany).

87. *The Extradition of Mohammed Hamadei*, *supra* note 63, at 1.

88. *Id.*

89. Markham, *Hijacking Suspect Arrested Bonn*, N.Y. Times, Jan. 16, 1987, at A1.

90. Treaty Between the United States of America and The Federal Republic of Germany, June 20, 1978, 32 U.S.T. 1485, T.I.A.S. No. 9785, (entering into force in the United States on Aug. 20, 1980) [hereinafter Extradition Treaty]. The United States and West Germany have since revised their extradition treaty, but it was not in force at the time of the TWA 847 hijacking. Supplemental Treaty of Oct. 21, 1986,

States does not recognize the obligation to extradite without a treaty.<sup>91</sup> In this case, the German-American treaty, combined with the United States' significant contacts with the hijacking, enabled the United States to seek the extradition of the Lebanese hijacker. The plane was American, there were numerous American passengers,<sup>92</sup> an American homicide victim, and a careful effort by the hijackers to identify and terrorize American passengers. These facts, and the absence of German interests and contacts, made the case close to perfect for extradition. In addition, the Aircraft Sabotage Act and the Hostage Taking Act gave the United States extraterritorial reach in cases of hostage taking, hijacking, and aircraft sabotage.<sup>93</sup>

International treaties and understandings among long-term allies, who are linked by close economic and political ties, can provide a powerful force in international relations. Treaties of extradition and mutual assistance in obtaining evidence are, however, regularly written with room for political judgment about their applicability. The procedures for compliance generally require not only action by the courts of the "requested" state, for instance Germany in Hamadei's case, but also approval by that state's political authorities.

The legal obligations under the German-American treaty are instructive because they are common to most extradition treaties.<sup>94</sup> Under this treaty, Germany had several alternatives for handling Hamadei. First, it could have extradited him to the United States, assuming the United States had filed a proper request.<sup>95</sup> Second, Germany could have tried him in a German court for violation of German statutes under the theory that his hijacking and hostage taking were universal crimes. If Hamadei's acts were universal crimes, any state could try Hamadei under international law so long as the acts were forbidden by the state's domestic law as well. German scholars assert

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United States-West Germany, S. TREATY DOC. No. 6, 100th Cong., 1st Sess. (1987), 1988 Bundesgesetzblatt II 1086 (W. Ger.).

91. M. BASSIOUNI, *INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER* 7 (1974); I. SHEARER, *EXTRADITION IN INTERNATIONAL LAW* 24 (1974). Generally, there is no obligation to extradite in the absence of a treaty.

92. See Berger, *Hijackers Release Over 60 From Jet Algiers Airport*, N.Y. Times, June 16, 1985, at A1 (noting that the act was clearly aimed against Americans). The hijackers sorted out United States passports from the others, looking especially for those of American servicemen. *Id.*

93. See *supra* notes 80-82 and accompanying text (relating the ramifications of the Aircraft Sabotage Act and the Hostage Taking Act).

94. See Extradition Treaty, *supra* note 90, and accompanying text (discussing the United States—West Germany Extradition Treaty).

95. See *id.* art. 14 (describing the steps necessary to make a formal request for extradition).

and defend an alternative, rarely used, basis for asserting international jurisdiction: that the state having custody of an individual who is properly sought for extradition always has the option of trying the individual in its own domestic courts instead.<sup>96</sup> Third, Germany could have initially tried Hamadei only for attempting to import explosives and other arms, thus delaying the questions of extradition and trial for hijacking, hostage taking, and murder. Germany then could have waited for the expiration of Hamadei's sentence for these crimes before facing the other issues. A final option for Germany might not satisfy its treaty obligations. As a practical matter, Germany could have released Hamadei, as Italy had done with Abu Abbas in the *Achille Lauro* case.

The extradition treaty left Germany free to choose among the first three alternatives. When the suspect is in the requested state's custody, extradition treaties generally offer the requested state the choice of trial or extradition and the choice as to the sequence of trials if the requested state may bring more than one charge. Many international law scholars might argue that the preferable system would be to extradite when the requesting state has far better reasons for trying the suspect than the requested state. International law, however, does not establish this. Because Germany had several legally valid options for handling Hamadei, political considerations determined Germany's choice of action.

Even Germany's final alternative, releasing Hamadei, might not have violated the treaty requirement that he either stand trial in Germany or that Germany extradite him to the United States. That requirement in the treaty depends upon a number of conditions. The crime for which the requesting state seeks the suspect must also be a serious crime in the requested state.<sup>97</sup> The United States' claim to jurisdiction over the events charged must fall within a recognized international jurisdiction.<sup>98</sup> The requesting state must have behaved reciprocally in similar circumstances,<sup>99</sup> and another state cannot have already tried the suspect for the same crime.<sup>100</sup>

Several of these conditions often remain unsatisfied. In Italy, for example, terrorists are generally charged with *associaziome*, the crime of participating in a group seeking to destabilize the government or com-

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96. See Meyer, *The Vicarious Administration of Justice: An Overlooked Basis of Jurisdiction*, 31 HARV. INT'L L.J. 108, 115-16 (1990) (discussing the punitive power of the state and various theories for asserting jurisdiction).

97. Extradition Treaty, *supra* note 90, art. 1(2)(a).

98. *Id.* art. 10.

99. *Id.* art. 1(1).

100. *Id.* art. 8.

mit acts against the state.<sup>101</sup> There is no parallel to *associazioni* in the statutes of many other states, and consequently they do not extradite terrorists charged with this crime. France, for example, has denied the extradition of many terrorists charged with *associazioni* in Italy.<sup>102</sup> Furthermore, it would be difficult for Italy to rewrite its statutes to make them coincide with those of its neighboring states, particularly when different neighbors have different laws.

Germany, like many other states with a civil law tradition, will not extradite one of its own nationals for trial in another state.<sup>103</sup> This was not a problem in Hamadei's case, since Hamadei was not a German citizen. Having prohibited the death penalty,<sup>104</sup> Germany would not extradite if the death sentence were possible in the extraditing state; but the requesting state could satisfy Germany by providing assurance that it would not impose this sentence.<sup>105</sup> Finally, it is very important to note that under treaties requiring extradition or trial, a state is generally bound only to submit its case to its prosecuting officials. These treaties do not require a state to actually try the offender in a court of law. Prosecutors can simply examine the case and decide not to prosecute.<sup>106</sup>

Whether or not a requesting state has met these conditions may be largely a technical question, although on several occasions France has relied on strained interpretations of its extradition treaties to mask its political concerns and refuse to extradite terrorists to Germany or Israel. In January 1977, for example, France released Abu Daoud, who

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101. Martin, Richard A., Representative of the Dept. of Justice at the United States Embassy in Rome, Italy, Draft Report on International Cooperation on Terrorism 5 (July 9, 1989)(available from The Center for Criminal Justice, Harvard Law School).

102. *Id.*

103. GRUNDGESETZ [G.G.] art. 16(2) (W. Ger.).

104. *Id.* art. 102.

105. See Extradition Treaty, *supra* note 90, art. 12 (stating that extradition will be denied "when the offense for which extradition is requested is punishable by death under the laws of the requesting state and the laws of the requested state do not permit such punishment for the offense"); Lagadny, *Die Rechtsstellung des Auszuliefernden in der Bundesrepublik Deutschland*, reprinted in BEITRÄGE UND MATERIALIEN AUS DEM MAX-PLANCK-INSTITUT FÜR AUSLÄNDISCHES UND INTERNATIONALES STRAFRECHT 48, 351 (1987) (discussing Germany's responsibility under its Constitution for Hamadei's treatment *after* extradition).

106. See Frei and Trechsel, *Origins and Applications of the United States-Switzerland Treaty on Mutual Assistance in Criminal Matters*, 31 HARV. INT'L L.J. 77, 80-81 (1990) (noting that prosecutorial discretion is more constrained in some legal systems than in others). Continental legal systems typically operate on the principle of "legality," whereby prosecution must commence whenever reasonable suspicion exists. *Id.* Little discretion resides in police or prosecutors as to which charges, if any, should be brought. *Id.*



was suspected of masterminding the 1972 terrorist attack at the Munich Olympics, even though both West Germany and Israel had filed prompt requests for his extradition. The Paris *Cour d'Appel* dismissed both requests on technical grounds. Most observers believe, however, that fear of terrorist retribution and a desire to maintain good relations with Arab states motivated the decision.

In those cases, France could have relied on the famous "political offense" exception to extradition obligations. Found in almost every treaty, the exception allows the judicial and political authorities of the requested state to refuse extradition on the ground that the crime itself was "political."<sup>107</sup> The political offense exception to the obligation to extradite or try has a devastating impact on the few international conventions outlawing airplane hijacking, attacks on diplomats and other "internationally protected persons," and hostage taking. None of these international conventions provides for effective sanctions against states that ignore their obligations, and states can interpret the "political offense" exception very broadly.

Even when close allies are involved, as in the case of the United States and the United Kingdom, Israel, Germany, France, or Italy, there is no agreement on what constitutes a political offense. The United States has departed substantially from its early 19th century tradition of identifying with revolutionary causes. Today, the United States would eliminate the political offense exception for ordinary violent crimes, at least if soldiers or other security forces were not the targets of the crimes. The new British-American treaty adopts this general direction.<sup>108</sup>

Greece's interpretation of political offenses is opposite that of the United States. An example is the case of Al Zumar, a Palestinian terrorist. Italy requested extradition of Zumar from Greece after he participated in the bombing of a synagogue in Rome that injured dozens

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107. See generally C. VAN DEN WIJNGAERT, *THE POLITICAL OFFENSE EXCEPTION TO EXTRADITION* (1980) (providing an extensive discussion of the political offense concept, its definition, and how nations do and should use it); See also *Extradition Treaty*, *supra* note 90, art. 4(1) (finding the formulation in the German-American treaty to be typical: "Extradition shall not be granted if the offense in respect of which it is requested is regarded by the Requested States as a political offense, an offense of a political character or as an offense connected with such an offense").

108. See *United States and United Kingdom Supplementary Extradition Treaty: Hearings on Treaty Doc. 88-8 Before the Senate Comm. on Foreign Relations*, 99th Cong., 1st Sess. 2 (1985) (discussing exclusion of particular crimes from the political offense exception to extradition). See generally Comment, *Revolutionaries Beware: The Erosion of the Political Offense Exception Under the 1986 United States-United Kingdom Supplementary Extradition Treaty*, 136 U. PA. L. REV. 1515 (1988) (describing the efforts of some nations to combat modern terrorism).

of people and killed one child.<sup>109</sup> Greek officials first notified Italian authorities that Greece would detain Zumar until he had served his sentence for a passport violation. Instead of extraditing him, as Italy had expected, under the Greek court's ruling that he was subject to extradition, the Greek Minister of Justice Vassilis Ratis denied extradition, stating that Al Zumar's action constituted legitimate political expression.<sup>110</sup> Al Zumar fled to Algeria.

The difficulties involved in extradition present a less than encouraging record for its use in cases of political violence. One study of the period between 1970 and 1975 found that of a total of 267 terrorists apprehended, fifty were convicted, but none had been extradited to another state for trial.<sup>111</sup> Another study found that of 353 persons involved in 256 airplane hijackings during the years 1977 to 1982, only one suspect was extradited.<sup>112</sup>

The case of Mohammed Ali Hamadei and the hijacked TWA flight 847 illustrated the procedures and the difficulties of the international extradition process. The United States had investigated the hijacking of TWA flight 847 long before Hamadei's capture, and in November 1985 had obtained sealed indictments against the hijackers.<sup>113</sup> Immediately after Hamadei's arrest in Germany, the United States sent a request for provisional arrest to the German government.<sup>114</sup> Within the surprisingly short period of a week, it forwarded a massive extradition request.<sup>115</sup> Within a week of Hamadei's arrest, however, two German nationals were taken hostage in Beirut.<sup>116</sup> The kidnappers demanded that Germany not extradite Hamadei to the United States but release him in exchange for the two Germans.<sup>117</sup>

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109. See Gordon, *Thornburg Deplores Greece's Release of Terrorist*, U.P.I. News, Dec. 8, 1988 (reporting Greece's release of Al Zumar).

110. See *id.* Rotis announced that Al Zumar was released because the bombing constituted an effort to achieve the independence of his homeland and because the PLO had renounced the use of terrorism. *Id.* The decision to release Al Zumar was carried out despite a Greek Supreme Court ruling in favor of extradition. *Id.*

111. Kittrie, *Reconciling the Irreconcilable: The Quest for International Agreement Over Political Crime and Terrorism*, 32 Y.B. WORLD AFFAIRS 208, 232 (1978).

112. See J. MURPHY, PUNISHING INTERNATIONAL TERRORISTS: THE LEGAL FRAMEWORK FOR POLICY INITIATIVES 109 (1985) (providing an overview of the legal framework and the policy towards terrorism and analyzing the disposition of cases involving captured terrorists).

113. See Cimon, *Death Penalty Ruled Out in Hijack Case; Move by U.S. Helps Clear Way for Bonn to Extradite Lebanese*, L.A. Times, Jan. 19, 1987, at 1 (discussing the decision by the U.S. not to seek the death penalty for Hamadei).

114. *Id.*

115. *The Extradition of Mohammed Hamadei*, *supra* note 63, at 6.

116. *Id.* at 1.

117. *Id.* at 6-7.

Chancellor Kohl of Germany formed a committee of top German officials to decide how to respond.<sup>118</sup> Germany has a federal government with most law enforcement responsibilities lodged at the state level. Normally, the Federal Justice Ministry in Germany would forward the American extradition request to the German state with responsibility for the case, in this instance Hesse.<sup>119</sup> A panel of judges in Hesse, the High Regional Court, would decide whether the provisional arrest was warranted and whether the extradition was in order.<sup>120</sup> If the court responded affirmatively to both questions, the matter would return to Bonn, the federal capital, for a political decision.<sup>121</sup>

Fearing that this routine procedure would lead to the execution of the hostages even if, after the judicial decision in Hesse, Bonn decided not to extradite, and thinking that the normal sequence might disrupt American-German relations, Chancellor Kohl's working group never sent the United States' extradition request to Hesse. The decisions whether to extradite Hamadei, to charge him in Germany for the hijacking under the "universal" jurisdiction of all states in matters of piracy and hijacking, to initially try Hamadei only for the passport and explosives charges, or to release him was to be made in Bonn. Considerations of Atlantic and Middle East foreign policy, concern for the lives of the hostages, a desire to have German investigators discover the reasons for the importation of the explosives, and other policy matters would affect Germany's decision, often competing with the moral force of its treaty with the United States.

The United States pressed Germany repeatedly for extradition, with arguments strengthened by the determination it showed in bombing Libya only a few months before in retaliation for a terrorist attack in Berlin.<sup>122</sup> Daily revelations that President Reagan had traded arms to Iran for American hostages, however, weakened the American position. As in the *Achille Lauro* case, the decision whether to try the hijackers in the courts of a European ally or of the United States was not sufficiently important to disturb relations among powerful allies. In a meeting of the Summit Seven in Venice in June 1987, President Reagan told Chancellor Kohl that he understood and accepted Germany's deci-

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118. *Id.* at 7.

119. *Id.* at 8.

120. Gesetz über die internationale Rechtshilfe in Strafsachen (Law on International Judicial Assistance in Criminal Matters), 1982 BGBl.I 2071 (W. Ger.) § 12.

121. *Id.* § 13.

122. See Schmemmann, *Evolution in Europe: Bonn, After Arrests, Checks for Honecker Link to Terrorists*, N.Y. Times, June 22, 1990, at A8 (discussing the bombing of the Berlin discotheque and the subsequent air strikes against Libya by American forces).

sion to try Hamadei for the hijacking and murder charges in Germany.<sup>123</sup>

### C. HARDER CASES: THE TRIAL OF GEORGES IBRAHIM ABDALLAH

The trials of the hijackers of the *Achille Lauro* in Italy and TWA flight 847 in Germany were satisfactory solutions. European allies refused extradition, but the trials went forward and the courts imposed severe sentences.<sup>124</sup> Problems arise, however, when an ally is less willing than were Italy and Germany to risk its own hostages and its own foreign policy interests. The requested state has several courses of action available to it. Despite treaties, technical flaws in a request allow the ally to ignore the requirements of extradition or trial, or the ally can proceed to trial in the requested state with a secret understanding with the terrorist group that the state will not seek to impose a severe sentence.<sup>125</sup> Finally, a state may find that the extradition treaty is inapplicable because a political offense was involved.

One solution in such cases is to exert diplomatic pressures on the state refusing extradition. At a minimum, reciprocity is at stake for the state that is now requested to furnish help may request help in the future. States may raise the matter in contexts where they are working out other bilateral relations. In an extreme case, requesting states could warn travellers of the dangers of travelling to a country which is hospitable to political violence against citizens of the requesting state.

The local population can also exert domestic pressure on a requested state. Large segments of the public generally adopt the American position of treating terrorism as a criminal matter beyond the bounds of diplomatic or humanitarian calculations, both for moral reasons and for fear that giving in to terrorists encourages further attacks and abuse of the state's territory. Generally, diplomatic courtesy precludes bypassing an ally's high-ranking officials and speaking directly to its public in criticism of official action. This remains, however, an option for requesting states.

In the *Achille Lauro* case the coalition government of Prime Minister Craxi dissolved when it disagreed over Craxi's handling of the hi-

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123. *The Extradition of Mohammed Hamadei*, *supra* note 63, at 18.

124. *See id.* at 20 (reporting that Hamadei received a sentence of life imprisonment for hijacking and murder); *The Achille Lauro Hijacking*, *supra* note 1, at 18 (reporting the sentences handed down by the Genoa Assize Court for the perpetrators of the *Achille Lauro* hijacking).

125. *See infra* notes 148-167 (discussing the possibility of Abdallah receiving a short sentence, because of the fear of reprisals against French citizens, and United States actions to ensure that Abdallah received the maximum sentence).

jackers. The United States' objections to Craxi's actions may have instigated the disagreement among Italian officials. Indeed, immediately after the Italian government allowed Abu Abbas to leave Italy, a statement issued by the White House described Abbas as "one of the most notorious Palestinian terrorists [who] has been involved in savage attacks on civilians,"<sup>126</sup> and stated that the American government was "astonished at this breach of any reasonable standard of due process."<sup>127</sup> The statement added that the United States "finds it incomprehensible that Italian authorities permitted Abu Abbas to leave Italy."

...<sup>128</sup>

Trying terrorists in domestic courts is one way that a treaty partner may avoid diplomatic and domestic pressures. The democratic tradition in western nations require that the judicial branch of government remain immune to international and domestic political pressure. If, however, the political authorities of a reluctant requested state use their control of prosecutors and perhaps also wield some private influence over the courts, the state may avoid extradition by promising trial and, at the same time, reassure suspects that they will not receive a severe sentence. In this way it can protect hostages or foreign policy interests without alienating a powerful ally that was the victim of terrorism. In fact, even if the requested state is sincere in its efforts to prosecute, most terrorism cases do not result in convictions. According to German Justice Ministry official Peter Wilkitzki, between 1980 and 1985, Germany refused extradition in sixty-nine cases, instead attempting to prosecute in its domestic courts.<sup>129</sup> Not one of these prosecutions was successful, generally because Germany was unable to gather adequate evidence.<sup>130</sup>

France chose this solution in the 1986 case of Georges Ibrahim Abdallah. Abdallah led a small terrorist group called the Lebanese Armed Revolutionary Factions (FARL).<sup>131</sup> The group primarily targeted diplomatic officials.<sup>132</sup> In 1981, a gunman shot and wounded First Counsellor Christian Chapman, of the American Embassy in

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126. White House Press Release, Oct. 13, 1985, reprinted in *The Achille Lauro Hijacking*, *supra* note 1, at 20(B).

127. *Id.*

128. *Id.*

129. *The Extradition of Mohammed Hamadei*, *supra* note 63, at 14.

130. *Id.*

131. Jenkins, *Terrorism in the Cour d'Assises: The U.S. v. France v. Georges Ibrahim Abdallah*, at 1, (1989) [hereinafter *U.S. v. France v. Abdallah*] (available from the Case Program, John F. Kennedy School of Government, Harvard University, Kennedy School Case No. C16-89-904.0).

132. *Id.* at 2.

Paris.<sup>133</sup> On January 18, 1982, the Deputy Military Attache, Lt. Col. Charles Ray was killed, and FARL publicly assumed responsibility for the murder.<sup>134</sup> Three months later, a terrorist used the same 7.65 caliber revolver to kill the Second Secretary, Yacov Barsimantov, of the Israeli Embassy in Paris.<sup>135</sup> In late 1982, FARL targeted the United States' commercial attache and the Israeli Embassy.<sup>136</sup> Further during 1984, FARL claimed responsibility for the assassination in Rome of the American General Leamon Hunt, chief of the international observation force in the Sinai, and for the wounding of Robert Homme, American representative to the European Parliament in Strasbourg.<sup>137</sup> Abdallah was also suspected in the 1976 assassination of Francis Meloy, the American Ambassador in Beirut.<sup>138</sup>

French counter-terrorist officials obtained much of the information that France needed about FARL from the Israeli secret service, the Mossad.<sup>139</sup> The Mossad had been following the FARL and its members closely. Italian sources provided a lead to the French counter-terrorism organization, the Directorate for Surveillance of the Territory (DST).<sup>140</sup> This information led, through careful surveillance of several FARL agents, to the arrest of Abdallah in the fall of 1984.<sup>141</sup> France formally charged Abdallah only with possession of forged documents and association with malefactors in Lyon.<sup>142</sup> The DST, however, aided by the counter-terrorism organizations of the United States and Israel, began an investigation that produced far more serious incriminating information.

The French government was under substantial pressure to release Abdallah, despite FARL's reign of terror on American and Israeli diplomats. Several months after Abdallah's arrest, Gilles Sydney Peyrolles, the director of the French cultural center in Tripoli, Libya, was kidnapped.<sup>143</sup> The French government learned that the kidnappers

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133. *Id.* at 1.

134. *Id.*

135. *Id.* at 2.

136. *Id.*

137. *Id.* at 3.

138. *Id.* at 2.

139. *See id.* (discussing the information provided to the DST by the Mossad on the origins of FARL, its leader, Abdallah, and Abdallah's prior involvement with terrorist groups in the Middle East and Europe).

140. *Id.* at 3.

141. *See id.* at 3-4 (discussing the details of the DST's pursuit of Abdallah).

142. *Id.* at 4.

143. *Id.* Peyrolles was also the son of Gilles Perrault, a close friend of President Mitterrand. *Id.*

would release Peyrolles only in exchange for Abdallah.<sup>144</sup> An activist from President Mitterrand's Socialist party who had close ties with Algeria's ruling party arranged for an Algerian lieutenant to visit with Abdallah in Paris.<sup>145</sup> Abdallah gave the Algerian the names of the people to whom he should speak.<sup>146</sup> The Algerian then met with FARL representatives in Beirut.<sup>147</sup>

The French foreign minister knew that it was impossible to remove Abdallah from the judicial process, but he was also aware that the justice minister had obligingly indicated that, given the state of the criminal charges against him, "Abdallah doesn't risk any more than eight months in prison."<sup>148</sup> The foreign minister conveyed to the kidnappers that "it is possible to foresee that Abdallah will only be subjected to proceedings in a correctional court."<sup>149</sup> On this basis the FARL kidnappers released Peyrolles.

Almost immediately thereafter, investigators discovered new evidence linking Abdallah directly and personally to the shootings of Chapman, Ray, and Barsimantov.<sup>150</sup> The investigating judge, who functions in France as a prosecutor might in the United States, received this evidence. As a result, he opened new proceedings for the shootings and homicides.<sup>151</sup> An early release for Abdallah looked increasingly unlikely. Abdallah wrote a public letter to the justice minister complaining that, at the time of Peyrolles' kidnapping, "the French government. . . informed me that I would be judged within a month for the use of false documents and expelled to the country of my choice if the Arab militants who had Mr. Peyrolles freed him. But I am still in prison."<sup>152</sup>

FARL representatives in Beirut threatened retaliation through bomb attacks unless France promptly released Abdallah and two other terrorists.<sup>153</sup> For several months, bombs exploded throughout Paris, caus-

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144. *Id.* at 5. The French government was assisted in its search for Peyrolles by Msgr. Hilarion Capucci, former Greek Catholic Archbishop in Jerusalem. *Id.* Capucci had also been involved in the negotiations for the release of the U.S. hostages in Iran in 1980, and reportedly had close contacts with many leaders of Middle East countries. *Id.* n.3.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at 6.

149. *Id.*

150. *Id.* The DST raided Abdallah's apartment in Paris and found the gun that was used to shoot the three men. *Id.*

151. *Id.*

152. *Id.* at 7.

153. *Id.* at 8.

ing numerous deaths, injuries, and near-panic.<sup>154</sup> A final pressure on the French came from France's Algerian intermediaries, who felt betrayed. The Algerians had relayed to FARL and Abdallah the French forecast of a maximum prison sentence of eight months. Now FARL threatened Algerian diplomats. The Algerians pleaded with the French to release Abdallah.

In these circumstances, the United States feared that the French would use a trial of Abdallah to bring about his prompt release rather than his prolonged detention. French authorities might send a subtle message to the investigating judge not to develop all of the relevant information. Alternatively, the prosecutor might urge the weakness of the case or the desirability of a light sentence. In one way or another, the government's strong wishes to dispose of the matter leniently might influence the prosecutors, the investigating magistrate, and the trial judges.

The United States also had cards to play. Courts in western democracies are proud of their independence. The rules of procedure in France, as in most countries using the Napoleonic Code, allow one who has received a "personal and direct injury" from a criminal act to join a civil case with the criminal proceedings.<sup>155</sup> As a participant in the merged civil-criminal proceedings, the civil party can ask the investigative magistrate to pursue additional investigations, summon witnesses and question them during the criminal trial, deliver opening and closing statements, and recommend prison sentences.

Both the United States, as the employer of the attacked diplomats, and the widow of Lt. Col. Charles R. Ray joined their civil suit to the criminal proceedings against Abdallah.<sup>156</sup> A distinguished Parisian attorney, Georges Kiejman, represented both the United States and Mrs. Ray. It seemed essential to intervene in the proceedings to assure vigorous prosecution. For in a preliminary trial for possession of weapons and explosives, use of forged documents, and association with malefactors, the judge had emphasized the historic friendship between France and Lebanon and the prosecutor had urged an unexpectedly low sentence, commenting that Abdallah had "never demonstrated any resentment towards France."<sup>157</sup>

Waiting to see if France would bring the more serious charges against Abdallah, the United States publicly complained to the French

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154. *Id.*

155. C. PEN. art. 86 (discussed in *id.* at 10).

156. *Id.* at 14.

157. *Id.* at 13.



press about the prosecutor's behavior in the earlier trial. The foreign minister objected that such comments ignored the independence of the judiciary in France. High-ranking American officials communicated their demand for a serious trial to their French counterparts. France responded that the courts and justice ministry would decide the case. The United States hinted that American tourists would avoid traveling to France in the future. The pressures on the French from the terrorists, however, remained as strong as they had always been.

The French security minister met with the judge in charge of investigating the more serious charges against Abdallah and urged him to delay his decision. Following the meeting, the judge told the press that the evidence against Abdallah seemed very weak. An official in the justice ministry issued orders to the public prosecutor's office to dismiss the charges against Abdallah. When the prosecutor did not dismiss the charges, Abdallah's supporters launched a new wave of bombings in September 1986.<sup>158</sup> Statements of the new French prime minister, Jacques Chirac, and of the interior minister suggested that France might be prepared to make a deal involving the release of Abdallah in exchange for an end to the terror on the streets of Paris.<sup>159</sup>

In this context of likely secret understandings between France, Algeria, FARL, and even Syria, an old ally of France in the Middle East, and amidst rumors in the press that the upcoming trial of Abdallah on the more serious charges would produce a verdict favorable to Abdallah, the United States decided to take advantage of the reputation of the courts for independence and allegiance to a set of non-political rules and procedures. Kiejman, the French lawyer representing the United States and Mrs. Ray, pressed the investigative magistrate to introduce powerful incriminating evidence that the magistrate had previously left out. The magistrate agreed to include the incriminating evidence. At trial, Kiejman effectively protested the alleged unavailability of a crucial witness, the French diplomat Peyrolles.<sup>160</sup> The FARL kidnappers had told Peyrolles that they were responsible for the shootings of Ray, Chapman, and Barsimantov. Keijman repeatedly suggested that the investigation and prosecution had been far from vigorous, and marked by repeated interference by the French government.<sup>161</sup> The French press became suspicious of improper meddling in criminal investigations for political reasons.

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158. *Id.* at 16.

159. *Id.* at 18.

160. *Id.* at 23.

161. *Id.* at 25.

At the close of the trial after four days of testimony, the prosecutor spoke of the risk to the hostages and explained that, "paying a personal price, [I come] to ask of you, to implore you, grieving to death: Do not pronounce against Ibrahim Abdallah a criminal sentence of more than ten years."<sup>162</sup> Keijman argued that the judges should put the danger of reprisals out of their mind, asserting that it was the judge's responsibility to sentence Abdallah.<sup>163</sup> The government could pardon him in part or in whole if that was its political judgment.<sup>164</sup> "It is not for you to do the state's work the first time a major terrorist appears before a French court. . . . Your only mission is to deliver justice not services. The only state for you should be the state of law."<sup>165</sup> The press described the closing arguments as the story of a government that "succumbed to the threat of terrorist attacks and a judicial system that succumbed to political influence."<sup>166</sup>

After only seventy minutes of deliberations, the judges sentenced Abdallah to the maximum sentence of life imprisonment.<sup>167</sup> The French press broadly applauded the courage and independence of the court.<sup>168</sup> The United States and other western states learned a new lesson. Although every extradition treaty gives the requested state the right to try the suspect rather than to extradite him—thus creating a fertile opportunity for making secret deals—victim states can effectively use the independence of the courts in any system where private parties have a right to participate in the criminal trial.

### CONCLUSION: A FINAL ASSESSMENT

The United States has been blessed with a remarkably small amount of terrorism within its borders, yet American citizens are leading targets of terrorist operations in Western Europe and the Middle East. Because terrorist attacks on Americans frequently occur abroad, it is in the interests of the United States to further international cooperation in preventing attacks and in arresting and convicting those responsible. We are on the right course in pressing the importance of international cooperation in discussions with our allies. The alternative of unilateral action is often brutal, particularly if it involves assassination by secret

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162. *Id.* at 26-27.

163. *Id.* at 27.

164. *Id.*

165. *Id.*

166. *Id.* at 28.

167. *Id.*

168. *Id.* (quoting reports from the French newspapers *Le Figaro*, *Libération*, and *Parisien Libéré*).

intelligence operations or open military retaliation against a state that supports terrorists. More measured unilateral action aimed at arrest and trial can rarely be executed without invading the sovereignty of other nations.

Politics are at least as important as law, and both are more important than public declarations in determining whether even our closest allies will cooperate in particular ways. The United States itself has not been steadfast in its handling of terrorism. Foreign policy concerns and bureaucratic suspicions continue to limit the exchange of information on terrorists among national intelligence agencies, even though recent cases provide dramatic examples of the success of intelligence sharing. Extradition treaties with the option of extradition or trial in the country where a suspect is found have poor statistical records of success, reflecting the ability of foreign and domestic politics to overcome treaty obligations. Nevertheless, the convictions and lengthy sentences of the *Achille Lauro* and TWA flight 847 hijackers may foreshadow better cooperation in the future.

Treaty obligations and rules of customary international law facilitate cooperation without requiring it, allowing nations to maneuver in their dealings with political violence. Ultimately, the extent of international cooperation with respect to terrorists depends upon the United States' success in arguing that the treatment of terrorism should be a matter of international morality and firm rules reflecting a message of unwavering determination, not a matter of accommodation to threats, foreign policy concerns, ideological sympathies, or domestic politics. This has not yet been the view of many of our closest allies, but it may become so in the future.